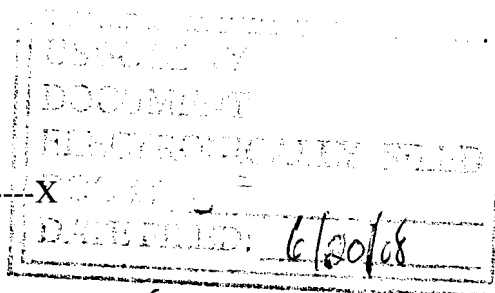


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



JAMES EDWARD McCARTHY, et al.,

Plaintiffs,

-against-

BERNARD STOLLMAN, et al.,

Defendants.

: 6
: 07 Civ. 2613 (DAB) (DF)

: **REPORT AND**
: **RECOMMENDATION**

: X

TO THE HONORABLE DEBORAH A. BATTS, U.S.D.J.:

In this copyright action, which has been referred to me for general pretrial supervision and to report and recommend on dispositive motions, defendants Bernard Stollman ("Stollman") and ESP-Disk (collectively, "Defendants") have filed a motion for summary judgment on the claims asserted against them. (Dkt. 29.) The motion, however, which was filed on behalf of Defendants by Stollman,¹ does not comply with Fed. R. Civ. P. 56 or the Rules of the Court. Specifically, the motion has not been supported by a sworn affidavit or a declaration made under penalty of perjury that sets forth any facts stated to be within the personal knowledge of the declarant. Nor is the motion supported by deposition testimony, documentary evidence of any kind, or indeed any evidence in admissible form. Nor have Defendants filed a statement of material undisputed facts, as required by Local Civ. R. 56.1. Under the circumstances, this Court is not in a position to recommend any resolution on the merits of the motion, and thus informed Defendants, at a case management conference on June 18, 2008, that it would instead recommend that the motion be denied without prejudice to renew, upon a proper filing.

¹ Stollman, who is an attorney admitted to practice before this Court, is appearing in this action *pro se*, as well as in the role of counsel for ESP-Disk.

6/20/08
Deborah A. Batts

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Accordingly, I hereby recommend that Defendants' motion for summary judgment, dated May 29, 2008 (Dkt. 29), be denied without prejudice.

* * *

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Such objections, and any responses to objections, shall be filed with the Clerk of Court, with courtesy copies delivered to the chambers of the Honorable Deborah A. Batts, United States Courthouse, 500 Pearl Street, Room 2510, New York, New York 10007, and to the chambers of the undersigned, United States Courthouse, 500 Pearl Street, Room 525, New York, New York, 10007. Any requests for an extension of time for filing objections must be directed to Judge Batts. FAILURE TO FILE OBJECTIONS WITHIN TEN (10) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See Thomas v. Arn*, 474 U.S. 140, 155 (1985); *IUE AFL-CIO Pension Fund v. Herrmann*, 9 F.3d 1049, 1054 (2d Cir. 1993); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988); *McCarthy v. Manson*, 714 F.2d 234, 237-38 (2d Cir. 1983).

Dated: New York, New York
June 20, 2008

Respectfully submitted,


DEBRA FREEMAN
United States Magistrate Judge

Copies to:

Hon. Deborah A. Batts, U.S.D.J.

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